UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT EARL WALKER,

                Petitioner,   Case Number: 06-13050

v.   HONORABLE AVERN COHN

CARMEN D. PALMER,

                Respondent.

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ORDER
DENYING PETITIONER'S MOTION FOR A CERTIFICATE OF APPEALABILITY

This is a habeas case under 28 U.S.C. § 2254. Petitioner Robert Earl Walker

(Petitioner) is a state prisoner convicted of one count of involuntary manslaughter and

two counts of mixing a harmful substance in a drink for which he is serving a sentence

of consecutive terms of 7-15 years on the manslaughter conviction and 2½ to 5 years

on the mixing a harmful substance conviction. Petitioner claimed that he is incarcerated

in violation of his constitutional rights and raised several claims in support of his petition.

The matter was referred to a magistrate judge for a report and recommendation

(MJRR). The magistrate judge considered all of Petitioner's claims on the merits and

recommended that the petition be denied. The Court adopted the MJRR and dismissed

the case. See Order filed February 7, 2008.[1]

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[1]Petitioner filed a motion to amend his petition on February 7, 2008 which was
received by the Court on February 11,2008. Petitioner sought to raise the issue of the
use of his prior conviction in the context of a prosecutorial misconduct claim. The Court

Before the Court is Petitioner's motion for a certificate of appealability on the claims raised in the petition.

II.

Before Petitioner can appeal the Court's decision, a certificate of appealability (COA) must issue. See 28 U.S.C. § 2253(c)(1) and Fed. R. App. P. 22(b). A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000), the United States Supreme Court held that where, as here, a petition is rejected on the merits, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." 120 S. Ct. at 1604. The Supreme Court has also explained that "[t]his threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims." Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). "A prisoner seeking a COA must prove 'something more than the absence of frivolity' 'or the existence of mere good faith on his or her part.'" A prisoner need not prove that "some jurists would grant the petition for habeas corpus .... a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." Id. at 1040.

In this Circuit, the Court must make an individualized determination of each claim raised in the petition in considering whether or not to grant a COA. See Murphy v. State of Ohio, 263 F.3d 466 (6th Cir. 2001) (per curiam). Moreover, where, as here, a

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denied the motion on the grounds that, in denying habeas relief, the Court determined the use of the prior conviction was proper. See Order filed February 13, 2008.

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petitioner files a notice of appeal, the Court must issue a order granting or denying a

COA. <u>Castro v. United States</u>, 310 F.3d 900 (6th Cir. 2002) (per curiam).

<div align="center">III.</div>

] Petitioner raised three claims, which pertained to the use of a prior conviction

and ineffective assistance of counsel. The magistrate judge fully explained why

Petitioner failed to show that any of his claims entitled him to habeas relief. Petitioner's

request for a COA fails to convince the Court that reasonable jurists would debate these

conclusions. Accordingly, Petitioner's request for a COA is DENIED.

SO ORDERED.

 s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 5, 2008

I hereby certify that a copy of the foregoing document was mailed to the attorneys of
record and Robert Walker, 260799, Michigan Reformatory, 1342 W. Main, Ionia, MI
48846 on this date, March 5, 2008, by electronic and/or ordinary mail.

 s/Julie Owens
Case Manager, (313) 234-5160